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7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 RONALD ANDRE BLACKWELL
13 275 Boylston Street
14 San Francisco, CA 94134

15 Pharmacy Technician License No. TCH 50387

16 Respondent.

Case No. 3051

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

17 FINDINGS OF FACT

18 1. On or about August 12, 2003, the Board of Pharmacy issued Pharmacy
19 Technician License No. TCH 50387 to Ronald Andre Blackwell (Respondent). The Pharmacy
20 Technician License was in full force and effect at all times relevant to the charges brought herein.
21 The License expired on March 31, 2007, and has not been renewed.

22 2. On or about February 23, 2007, Complainant Virginia Herold, in her
23 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
24 Consumer Affairs, filed Accusation No. 3051 against Respondent before the Board.

25 3. On or about February 26, 2007, Fe M. Domingo, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 3051, a
27 Statement to Respondent, two copies of a Notice of Defense, a Request for Discovery, and copies
28 of Government Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record

1 with the Board, which was and is 275 Boylston Street, San Francisco, CA 94134. A copy of the
2 Accusation, the related documents, and the Declaration of Service are attached as exhibit A, and
3 are incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 5. Government Code section 11506 states, in pertinent part:

7 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
9 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
10 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

11 6. Respondent failed to file a Notice of Defense within 15 days after service
12 upon him of, and therefore waived his right to a hearing on the merits of, Accusation No. 3051.

13 7. California Government Code section 11520 states, in pertinent part:

14 "(a) If the respondent either fails to file a notice of defense or to appear at the
15 hearing, the agency may take action based upon the respondent's express admissions or upon
16 other evidence and affidavits may be used as evidence without any notice to respondent."

17 8. Pursuant to its authority under Government Code section 11520, the Board
18 finds Respondent is in default. The Board will take action without further hearing and, based on
19 Respondent's express admissions by way of default and the evidence before it, finds that the
20 allegations in Accusation No. 3051 are true.

21 9. The total costs for investigation and enforcement are \$2,453.50 as of April
22 23, 2007.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Ronald Andre
25 Blackwell has subjected his Pharmacy Technician License No. TCH 50387 to discipline.

26 2. A copy of the Accusation and the related documents and Declaration of
27 Service are attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
2 Technician License based upon the following violations alleged in the Accusation:

3 a. In violation of Business and Professions Code section 4301(l) and
4 California Code of Regulations, title 16, section 1770, Respondent was convicted, on or about
5 October 17, 2005, of a crime substantially related to pharmacy practice, pursuant to a plea of *nolo*
6 *contendere* to violating Penal Code section 484 [Theft], a misdemeanor, in a criminal proceeding
7 in San Mateo County Superior Court titled *People v. Ronald Andre Blackwell Jr.*, Case No. NM
8 347643A, a conviction arising out of Respondent's conduct in December 2004 and January 2005
9 of stealing controlled substances and dangerous drugs including **Vicodin** or other **hydrocodone-**
10 containing drugs, **Tylenol with Codeine No. 3**, **Tylenol with Codeine No. 4**, and **Viagra** from a
11 Walgreens Pharmacy by which Respondent was employed as a pharmacy technician, and selling
12 the stolen drugs on the street for cash;

13 b. In violation of Business and Professions Code section 4301(f),
14 Respondent, as described in paragraph 4(a) above, committed acts involving moral turpitude,
15 dishonesty, fraud, deceit or corruption;

16 c. In violation of Business and Professions Code sections 4301(j)
17 and/or 4301(o), Respondent, as described in paragraph 4(a) above, violated, attempted to violate,
18 assisted in or abetted violation of or conspired to violate laws regulating controlled substances
19 and dangerous drugs and/or laws governing pharmacy, when Respondent, not a pharmacist, sold,
20 furnished, or dispensed to others, dangerous drugs, in violation of section 4051 of the Code;

21 d. In violation of Business and Professions Code sections 4301(j)
22 and/or 4301(o), Respondent, as described in paragraph 4(a) above, violated, attempted to violate,
23 assisted in or abetted violation of or conspired to violate laws regulating controlled substances
24 and dangerous drugs and/or laws governing pharmacy, when Respondent furnished/dispensed to
25 himself or to others, without valid prescriptions, controlled substances and/or dangerous drugs, in
26 violation of section 4059 of the Code;

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1 e. In violation of Business and Professions Code sections 4301(j)
2 and/or 4301(o), Respondent, as described in paragraph 4(a) above, violated, attempted to violate,
3 assisted in or abetted violation of or conspired to violate laws regulating controlled substances
4 and dangerous drugs and/or laws governing pharmacy, when Respondent possessed, without
5 valid prescriptions, controlled substances and/or dangerous drugs, in violation of section 4060 of
6 the Code and/or Health and Safety Code section 11350;

7 f. In violation of Business and Professions Code sections 4301(j)
8 and/or 4301(o), Respondent, as described in paragraph 4(a) above, violated, attempted to violate,
9 assisted in or abetted violation of or conspired to violate laws regulating controlled substances
10 and dangerous drugs and/or laws governing pharmacy, when Respondent, in violation of Health
11 and Safety Code section 11173, obtained controlled substances and/or dangerous drugs by fraud,
12 deceit, misrepresentation, subterfuge, or by the concealment of a material fact;

13 g. In violation of Business and Professions Code sections 4301(j)
14 and/or 4301(o), Respondent, as described in paragraph 4(a) above, had in his possession and/or
15 conspired to possess and/or assisted in or abetted the possession of narcotic controlled
16 substances, for purposes of sale, in violation of Health and Safety Code section 11351;

17 h. In violation of Business and Professions Code sections 4301(j)
18 and/or 4301(o), Respondent, as described in paragraph 4(a) above, sold / furnished and/or
19 conspired to sell or furnish and/or assisted in or abetted the sale or furnishing of narcotic
20 controlled substances, in violation of Health and Safety Code section 11352;

21 i. In violation of Business and Professions Code section 4301,
22 Respondent, as described in paragraph 4(a) above, engaged in "unprofessional conduct" not
23 becoming the profession of pharmacy.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined by statute.

It is so ORDERED May 21, 2007

By William Powers
WILLIAM POWERS
Board President

Attachments:

5

Exhibit A
Accusation No. 3051,
Related Documents and Declaration of Service

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15 Respondent.

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A C C U S A T I O N

16
17 Complainant alleges:

18 PARTIES

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 12, 2003, the Board of Pharmacy issued Pharmacy
22 Technician License Number TCH 50387 to Ronald Andre Blackwell (Respondent). The
23 Pharmacy Technician License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on March 31, 2007, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

...

“(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

• • •

“(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

• • •

“(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

1
2 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or
3 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
4 applicable federal and state laws and regulations governing pharmacy, including regulations
5 established by the board.

6 ...
7 8. California Code of Regulations, title 16, section 1770, states:

8 “For the purpose of denial, suspension, or revocation of a personal or facility
9 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
10 Code, a crime or act shall be considered substantially related to the qualifications, functions or
11 duties of a licensee or registrant if to a substantial degree it evidences present or potential
12 unfitness of a licensee or registrant to perform the functions authorized by his license or
13 registration in a manner consistent with the public health, safety, or welfare.”

14 9. Section 4051 of the Code provides, in pertinent part, that it is unlawful for
15 any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or
16 dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a
17 prescriber, unless he or she is a pharmacist under this chapter.

18 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any
19 dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

20 11. Section 4060 of the Code provides, in pertinent part, that no person shall
21 possess any controlled substance, except that furnished upon a valid prescription/drug order.

22 12. Health and Safety Code section 11173, subdivision (a), provides that no
23 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure
24 the administration of or prescription for controlled substances, (1) by fraud, deceit,
25 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

26 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful
27 to possess certain Schedule I-III controlled substances, or any controlled substance in Schedules
28 III-V which is a narcotic drug, unless upon written prescription of an authorized prescriber.

1 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful
2 for any person to possess for sale or purchase for sale any controlled substance classified in
3 Schedule III, IV, or V which is a narcotic drug.

4 15. Health and Safety Code section 11352, in pertinent part, makes it unlawful
5 for any person to transport, import into this state, sell, furnish, administer, or give away, or offer
6 to transport, import into this state, sell, furnish, administer, or give away, any controlled
7 substance classified in Schedule III, IV, or V which is a narcotic drug.

8 16. Section 125.3 of the Code provides, in pertinent part, that the Board may
9 request the administrative law judge to direct a licentiate found to have committed a violation of
10 the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 17. Section 4021 of the Code states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing
14 with Section 11053) of Division 10 of the Health and Safety Code.”

15 18. Section 4022 of the Code states, in pertinent part:

16 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for
17 self-use, except veterinary drugs that are labeled as such, and includes the following:

18 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
19 without prescription,’ ‘Rx only,’ or words of similar import.

20 ...

21 “(c) Any other drug or device that by federal or state law can be lawfully
22 dispensed only on prescription or furnished pursuant to Section 4006.”

23 19. **Norco, Lortab, Vicodin, and Lorcet** are brand names for compounds of
24 varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III controlled
25 substance designated by Health and Safety Code section 11056(e)(4) and a dangerous drug
26 designated by Business and Professions Code section 4022. These varying compounds are also
27 known as **Hydrocodone with APAP**. These are narcotic pain relief drugs.

28 ///

1 20. **Tylenol with Codeine No. 3 and No. 4** ("Tylenol #3 " and Tylenol #4")
2 are brands for compounds of acetaminophen (APAP) and **codeine**, a Schedule III controlled
3 substance designated by Health and Safety Code section 11056(e)(2) and a dangerous drug
4 designated by Business and Professions Code section 4022. These are narcotic pain relievers.

5 21. **Viagra** is a brand name for **sildenafil**, a dangerous drug designated by
6 Business and Professions Code section 4022, intended as a treatment for erectile dysfunction.

7 FACTUAL BACKGROUND

8 22. Between in or about October 2003 and in or about April 2005, Respondent
9 was employed as a pharmacy technician at a Walgreens Pharmacy (PHY 41638) in San Mateo,
10 CA and/or at a Walgreens Pharmacy (PHY 40643) in Palo Alto, CA.

11 23. In the latter half of 2004, Walgreens pharmacy supervisors began noticing
12 controlled substance/dangerous drug inventory shortages at one or both stores, particularly of
13 significant quantities of generic **Vicodin** and/or other **hydrocodone**-containing drug products.

14 24. An investigation initiated in or about January 2005 resulted in intensive
15 daily monitoring of controlled substance inventories at both stores, along with the installation of
16 videocameras at the San Mateo store in an attempt to confirm suspected employee theft.

17 25. Another pharmacy technician (A.T.)¹ was identified on videotape engaged
18 in suspicious behaviors. Subsequent interview(s) with A.T. confirmed his responsibility for theft
19 of controlled substances and dangerous drugs for resale on the street, with an estimated personal
20 profit of \$3,500.00. A.T. also identified Respondent as being responsible for additional theft(s).

21 26. In subsequent interview(s) and by written statement, Respondent admitted
22 to stealing controlled substances and dangerous drugs from Walgreens in December 2004 and/or
23 January 2005 and selling them on the street for cash. Respondent admitted to taking one full or
24 partial bottle each of **Tylenol #3 or #4**, **Vicodin** or its generic equivalent, and **Viagra**. The loss
25 to Walgreens was estimated at \$480.00. Respondent estimated that he made \$500.00 in profits.

26 27. Respondent was terminated by Walgreens on or about April 2, 2005.

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1. The full name will be provided to Respondent during discovery.

28. On or about April 30 and May 3, 2005, Walgreens reported total inventory shortages at its San Mateo and Palo Alto stores including nearly 25,000 tablets of **Vicodin** and/or of other **hydrocodone**-containing products as well as nearly 300 tablets of **Tylenol #3** and 100+ tablets of **Tylenol #4**, missing from the San Mateo location (PHY 41638), and a further 2,600+ tablets of **hydrocodone**-containing products missing from the Palo Alto location (PHY 40643).

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

29. Respondent is subject to discipline under section 4301(l) of the Code by reference to or inclusive of California Code of Regulations, title 16, section 1770, in that on or about October 17, 2005, in a criminal case titled *People v. Ronald Andre Blackwell Jr.*, Case No. NM 347643A in San Mateo County Superior Court, Respondent was convicted on his plea of *nolo contendere* of violating Penal Code section 484 [Theft], a misdemeanor. The conviction was entered in San Mateo County Superior Court as follows:

a. On or about April 2, 2005, on the basis of the information described above in paragraphs 22-26, Respondent was arrested by the San Mateo Police Department for violating Penal Code section 508 [Embezzlement by Employee].

b. On or about April 4, 2005, a criminal Complaint against Respondent was filed charging him with one misdemeanor count of violating Penal Code sections 508 and/or 487 [Embezzlement by Employee/Grand Theft of Value over \$400.00].

c. On or about October 17, 2005, the Complaint was amended by oral motion of the District Attorney to add a second count of violating Penal Code section 484 [Theft], also a misdemeanor. Respondent pleaded *nolo contendere* to this second count, and by motion of the District Attorney the first count of the Complaint was dismissed as part of the plea.

d. On or about October 17, 2005, imposition of sentence was suspended and Respondent was placed on court probation for a period of 2 years, with terms including service of 3 days in county jail, with credit for 3 days already served, \$110.00 payable to a state restitution fund, fees totaling \$222.00, and other terms and conditions including search conditions.

PRAYER

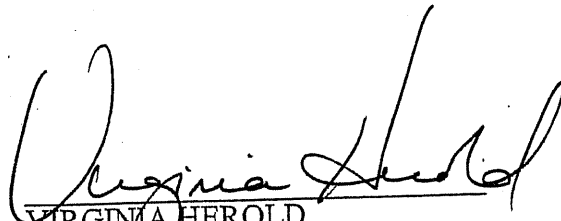
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

A. Revoking or suspending Pharmacy Technician License Number TCH 50387, issued to Ronald Andre Blackwell (Respondent).

B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

C. Taking such other and further action as is deemed necessary and proper.

DATED 2/23/07



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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